

**LETTER OPINION
2002-L-35**

June 7, 2002

Honorable Ralph Metcalf
State Representative
11819 33rd Street SE
Valley City, ND 58072-9404

Dear Representative Metcalf:

Thank you for your letter regarding 2001 House Bill 1023 as it pertains to the Water Commission's authority to cost-share on water quality projects. You ask three questions about the bill. The legislation amended N.D.C.C. § 61-01-26 which declares the state's water resources policy, and N.D.C.C. § 61-02-14 which describes the Water Commission's powers and duties.

The first question asks whether sections 10 and 13 of H.B. 1023 are part of the permanent law. Section 10 of H.B. 1023 amended subsections 4 and 5 of N.D.C.C. § 61-01-26 by adding the language underlined below:

4. Accruing benefits from these resources can best be achieved for the people of the state through the development, execution, and periodic updating of comprehensive, coordinated, and well-balanced short-term and long-term plans and programs for the conservation and development of such resources by the departments and agencies of the state having responsibilities therefor. The plans and programs for the conservation and development of these resources may include implementation of a program to cost-share with local sponsors of water quality improvement projects.

5. Adequate implementation of such plans and programs shall be provided by the state through cost-sharing and cooperative participation with the appropriate federal and state departments and agencies and political subdivisions within the limitation of budgetary requirements and administrative capabilities, including

consideration of cost-sharing for water quality improvement projects.

Section 13 of H.B. 1023 added subsection 8 to N.D.C.C. § 61-02-14. That subsection authorizes the Commission “[t]o consider cost-sharing for water quality improvement projects.”

All three amendments took effect on July 1, 2001. None of these amendments has a sunset or expiration date; thus, they will continue as part of the permanent law until amended or repealed.

Your second question concerns whether the Water Commission can spend more than \$200,000 for cost-sharing for section 319 projects if the Water Commission determines it has additional funds available in the water development projects appropriation line item.

Section 2 of H.B. 1023 provides:

The amount of \$200,000, or so much of the funds as may be necessary, included in the statewide water development projects line item in section 1 of this Act is for cost-sharing for projects authorized under section 319 of the Federal Water Pollution Control Act [Pub. L. 100-4; 100 Stat. 52; 33 U.S.C. 1329] for the control of nonpoint sources of pollution for the biennium beginning July 1, 2001, and ending June 30, 2003.

Generally, the Legislature has appropriated funds to the Water Commission for various water projects without identifying specific amounts for specific projects or without identifying specific projects.¹ See, e.g., 2001 H.B. 1023; 1999 S.B. 2023. This gives the Commission the discretion to allocate funds during the biennium based on changing

¹ Even though the Legislature does not appropriate specific amounts for specific projects, the Water Commission provides it with information on the various projects it proposes for funding. Section 57-15.1-07.2, N.D.C.C., requires the Water Commission to provide reports to the Legislature identifying projects proposed for funding from the resources trust fund. Under N.D.C.C. §61-01-26, the Water Commission prepares a statewide water development plan. In 1999 the Legislature required the Water Commission to report to interim legislative committees on the statewide plan and to develop a new plan. 1999 N.D. Sess. Laws ch. 535 §§ 9 and 10. In 2001 the Legislature again required the Water Commission to develop a new statewide water development plan. 2001 N.D. Sess. Laws ch. 22 § 10. These plans identify specific projects and funding amounts for them. See, e.g., North Dakota State Water Commission, Revised Water Development 2001 Biennial Report, a Supplement to the 1999 Water Management Plan (Dec. 15, 2000).

circumstances. For example, should one project not proceed as planned, but another project is needed due to an emergency or a project is needed that was not foreseen during the legislative session, the Commission can allocate or reallocate funds for the new project.

Because the Commission has the discretion, in most cases, to allocate funds appropriated to it for the water projects it deems necessary and in amounts it determines appropriate, it is unclear whether the amount identified in section 2 of H.B. 1023 was intended as a limit on the amount the Commission could use for section 319 water quality projects. If the language of a statute is ambiguous or of doubtful meaning, extrinsic aids may be used to interpret the statute. Kim-Go v. J.P. Furlong Enterprises, Inc., 460 N.W.2d 694, 696 (N.D. 1990). One extrinsic aid available to construe an ambiguous statute is the legislative history. N.D.C.C. § 1-02-39.

Section 2 of H.B. 1023 originally arose in 2001 H.B. 1396. See Hearing on H.B. 1023 Before the Appropriations Conf. Comm., 2001 N.D. Leg. (Apr. 10) (Testimony of Senator David Nething). The provisions in H.B. 1396 were incorporated into H.B. 1023. Id.

State Engineer Dale Frink testified that “the cap” for the cost-share for section 319 water quality projects “is \$200,000.” Hearing on H.B. 1396 Before the Senate Appropriations Comm., 2001 N.D. Leg. (Mar. 30). Additionally, Senator Larry Robinson testified that it was the intent of the subcommittee reviewing the Water Commission’s budget “to allow up to \$200,000” for this line item. Hearing on H.B. 1396 Before the Senate Appropriations Comm., 2001 N.D. Leg. (Mar. 30) (emphasis added). Several days later, before the conference committee, Senator Robinson testified that there was broad-based support in the Senate for funding water quality projects at the \$200,000 level, but there was opposition to going any higher. Hearing on H.B. 1023 Before the Appropriations Conf. Comm., 2001 N.D. Leg. (Apr. 10) (Tape 1, Side A). The Legislative history indicates that the amount identified in Section 2 of H.B. 1023 is a limit on the amount the Water Commission can spend on section 391 water quality projects.

Thus, it is my opinion that H.B. 1023, allowing for “\$200,000, or so much of the funds as may be necessary . . .”, limits funds for cost-sharing on water quality projects to \$200,000 this biennium.

Your last question asks about the Water Commission’s future funding of water quality control projects. In particular, you ask whether the Commission could fund these projects with its general water development projects appropriation or whether it will need a special authorization as has been done for the current biennium. Sections 61-01-26 and 61-02-14(8), N.D.C.C., authorize the Water Commission to cost-share for water quality improvement projects. If there is no contrary language included in the Water Commission’s appropriation bill or other laws passed affecting the Water

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Commission's ability to cost-share, future funding for water quality improvement projects will only be limited by the discretion of the Commission and available funds.

Sincerely,

Wayne Stenehjem
Attorney General

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